IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12460 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DILAWAR @ DILO ALLARKHA MIYANA

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 12460 of 2001

MR ANIL S DAVE for Petitioner No. 1

MS BANNA S DUTTA for Petitioner No. 1

MR S.S. PATEL, AGP for Respondent State

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 06/02/2002

ORAL JUDGEMENT

The petitioner came to be detained by virtue of an order dated 25.7.2001 passed by the Commissioner of Police,

Ahmedabad City, Ahmedabad in exercise of power under Section 3 of the PASA Act. The petitioner seeks to challenge the said order by this petition under Article 226 of the of Constitution of India.

2. The grounds of detention indicate that the petitioner has been branded as a boot-legger. The detaining authority has considered two registered offences against the detenu under the Bombay Prohibition Act. The detaining authority observed that the detenu's activities are that of a boot-legger and are detrimental to public health and public order. The detaining authority recorded a satisfaction that the petitioner is required to be immediately prevented from pursuing his illegal and anti-social activities and resorting to less drastic remedy under ordinary law is not possible as immediate prevention is necessary and therefore, passed the order in exercise of powers under Section 3 of the PASA Act.

3. Learned Advocate for the petitioner contended that there is nothing to indicate that there was disturbance to public order when the registered offences were committed. She further contended that some of the documents supplied to the detenu are not legible and therefore, the right of the detenu of making an effective representation is affected. She has also contended that there is improper exercise of power under Section 9(2) of the PASA Act.

4. Learned Assistant Government Pleader Mr. S.S. Patel has opposed to this petition.

5. Having regard to the rival side contentions raised before this Court, there is no dispute about the fact that some of the documents supplied to the detenu are not legible. Learned AGP after verifying the file, in all fairness concedes that few pages are not legible. Thus, it is clear that the right of the detenu of making an effective representation is affected and the registered offence therefore cannot form a valid ground for exercising power under Section 3 of the PASA Act. The use of power under Section 9(2) of the PASA Act therefore cannot be considered as based on cogent material. This would infringe the right of the detenu of making an effective representation and vitiate the detention. The petition therefore deserves to be allowed.

6. The petition is therefore, allowed. Order of detention dated 25.7.2001 passed by the Commissioner of

Police, Ahmedabad City against the detenu is quashed and set aside. Detenu Dilawar alias Dilo Allarkha Miyana be released from detention forthwith, if not required in any other case. Rule made absolute. No costs. Direct service permitted.

(A.L.Dave,J.)

*/Mohandas